

XanGo, LLC

Distributor Guide

Proposed FTC  
Business Opportunity Rule

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## **Summary of the proposed FTC Business Opportunity Rule**

The Federal Trade Commission (FTC) recently proposed a new business opportunity rule that will affect every XanGo distributor. The new proposed rule is intended to protect consumers from fraudulent business “opportunities” and to enhance the current laws of the Franchise Rule and the FTC Act. The FTC felt that these two current laws left too many loopholes and were not written to address the unique scams that are occurring frequently with new business opportunities.

- The proposed rule would eliminate the \$500 minimum investment requirement from the Franchise Rule, meaning the current laws under the Franchise Rule would apply to all business opportunities, including your XanGo distributorship.
- The proposed rule would also eliminate many of the 20 disclosures that are required for franchises, but do not apply to business opportunities. Instead, the new rule would require a one-page disclosure addressing five items:
  - whether or not sellers make earnings claims;
  - a list of any criminal or civil legal actions against the seller or its representatives that involve fraud, misrepresentations, securities, or deceptive or unfair trade practices;
  - whether the seller has cancellation or refund policies and such policies’ terms;
  - the total number of purchasers in the past two years and the number of those purchasers seeking a refund or to cancel in that time period; and
  - a list of references.
- The proposed rule would not require any business opportunity seller to make an earnings claim, however, if they do make an earnings claim, they would be required to provide additional substantiation in the form of a written “Earnings Claims Statement.” This claims statement would be a legal document and actionable.
- The proposed rule would also prohibit unfair or deceptive practices that are common among fraudulent business opportunity sellers, including:
  - Misrepresentations about the material terms of the business relationship;
  - The use of shills; (a shill is an associate of a person selling goods or services who pretends no association to the seller and assumes the air of an enthusiastic customer. The intention of the shill is to use crowd psychology to encourage other potential customers, unaware of the set-up, to purchase the goods or services.)
  - Misrepresentations of endorsements or testimonials;
  - Failure to honor territorial protection guarantees; and
  - Failure to honor refunds.

## **A brief background of how this rule came to be**

The FTC Commission relies heavily on its law enforcement experience and on consumer complaints in addressing business opportunity fraud. The most frequent allegations pertain to false or unsubstantiated earnings claims. Earnings claims are followed by false testimonials, fictitious references, misrepresentations about location profitability, availability of support and assistance, nature of products or services sold, prior success of seller, full investment costs, and refund policies.

There are many unethical and unscrupulous people in the world that have unfortunately found that the quickest path to a profitable swindle is through the MLM sales model. As a result, the FTC finds itself with few options to protect the public. By working with the FTC and presenting them with credible proof that all MLM's are not created equal, we hope to help them find a way to stop fraudulent business opportunities while sparing the legitimate ones. To do this, it is of the utmost importance that every XanGo distributor manages their business with the highest degree of truth and candor. No sale is worth sacrificing your integrity.

## **What XanGo, LLC is doing**

As a distributor for XanGo, LLC, you can rest assured that your corporate headquarters is doing everything possible to protect your/our interests in this matter. Since the FTC announced the proposed rule on April 12, 2006, we have been working diligently to counter the negative affects of this rule on the direct sales industry.

- XanGo has been an active participant in the Direct Selling Association's (DSA) industry-wide comprehensive response strategy.
- We have developed both short and long-term action plans.
- We have taken a proactive lead on this issue through our association in the United Natural Products Alliance (UNPA).
- Our legal team is working closely with DSA's legal team in the development of their official comments to the FTC.
- XanGo's legal team is writing our own comprehensive, point-by-point comment response that will be submitted to the FTC.
- We are mobilizing XanGo's vast network of independent distributors in a grassroots effort to cause the FTC to reconsider the provisions in this proposed rule that will devastate our industry.

## **How this rule would affect your direct sales business**

As stated above, there are five disclosure requirements in the proposed rule that will have a significant impact on your business. Below is a brief description of the requirements and their potential impact on your business.

*1. Seven day waiting period.* While all the requirements are significant, the most devastating requirement is the seven day waiting period. This means that a prospective purchaser cannot sign a contract or make a payment until seven days has elapsed from the time he was given all the required disclosures. This waiting period will certainly inconvenience and “chill” enthusiastic individuals anxious to participate in the XanGo business opportunity. It will also create an air of suspicion among prospective purchasers when told that the FTC requires such a waiting period. This waiting period will also create tremendous inconvenience for those distributors who recruit on the road. It will require gathering contact information and following up seven days later, assuming that all the disclosures were given at the time of the meeting. This waiting period suggests a level of risk that simply doesn’t exist for XanGo and many other direct selling companies. XanGo requires a very minimal up-front financial investment, and XanGo has a generous buyback policy which presents little or no risk to a prospective purchaser.

*2. List of nearest references.* As part of the disclosure requirements, prospective purchasers will need to be given the names, addresses and telephone numbers of the 10 geographically nearest purchasers. You will have to contact XanGo, which maintains the distributor database, to access the information required by this disclosure. This requirement is overly burdensome and evokes confidentiality and privacy concerns for all involved. Logistically speaking, because you don’t know where a prospective purchaser lives before meeting him, it will be difficult to have this information available to disclose until a later time. This will further prolong the seven day waiting period. From a privacy perspective, all distributors will have to agree to have their names, addresses and telephone numbers disclosed to prospective purchasers for possible contacting. The disclosure of this information will not be limited to bona fide purchasers, but will have to be given to anyone who might be interested, including competitors. The reference information could then be used for any purpose. The required disclosure of this information will certainly discourage participation in the direct selling industry and will not be a significant deterrent to fraud businesses. It would be very easy for a fraudulent company to provide a list of “references” who are involved in the fraudulent business, but very burdensome on legitimate direct selling businesses.

*3. Earnings claim statement.* If the company or a distributor states or implies a specific level or range of income or profits, then an earnings claim statement is required to accompany the disclosure. The earnings claim statement must contain evidence that substantiates the claims. An earnings claim is defined very broadly, and can include photographs of cars, homes, and the like. The proposed rule also requires potentially complex compilations of statistical matrices of time periods, demographic data and earnings claims. While XanGo strongly supports the proposition that earnings claims made by business opportunity sellers should be substantiated, this requirement will not

deter fraud. A fraudulent company will not provide accurate data, while legitimate business opportunity sellers will have difficulty in meeting the proposed requirements.

*4. Legal actions.* The proposed rule requires that distributors disclose all legal actions, regardless of the outcome, concerning “misrepresentation, fraud, securities law violations, or unfair or deceptive practices” during the previous 10 years. Not only would this rule require disclosure of litigation potentially unrelated to the business opportunity transaction, but it doesn’t provide for disclosure of the outcome of the litigation. Thus, litigation that was favorably resolved for the distributor, or is otherwise irrelevant to the recipient of the disclosures, would still need to be provided. At the very least this requirement should be modified to take into account these problematic elements.

*5. Cancellations and refunds.* The proposed rule would require that distributors disclose the total number of purchasers of the business opportunity in the last two years and the number of oral and written cancellation requests during that same period. While XanGo would have to maintain and update this database for its distributors, its disclosure can be misleading due to the fact that distributors often join to achieve specific, short-term objectives, leading to a high cancellation ratio that is not representative of the satisfaction of the average new purchaser.

## **XanGo Distributor Guide to Submitting Comments to the FTC**

### **Where can I read the proposed rule?**

- Visit the FTC website <http://www.ftc.gov/opa/2006/04/newbizopprule.htm> to read the Notice of Proposed Rulemaking and the news release describing this proposed rule.

### **What are the deadline dates?**

- All comments must be received on or before July 17, 2006.
- Rebuttal comments must be received on or before August 7, 2006.

### **How do I comment?**

- All comments must be in writing and should be written in your own words. (*See comment guidelines below.*)
- All comments must refer to “Business Opportunity Rule, R511993”.
- All comments are public record.

### **Where do I send my comments?**

- Due to heightened security precautions in the Washington, DC area, **the recommended method of correspondence is in electronic form.** To submit your comments by electronic method, click on the following Web link and follow the instructions on the web-based form. This form is very easy to use.

<https://secure.commentworks.com/ftc-bizopNPR/>

- Comments in paper form should be sent to the following address by courier or overnight service. Do not use U.S. Postal Service due to delay from heightened security precautions. Paper is the least preferable method; however, **comments containing confidential material must be filed in paper form.**
  - Comments in paper form must reference “Business Opportunity Rule, R511993” both in the text and on the envelope.
  - Additionally, comments in paper form must also include two complete copies.

Deliver to: Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex W)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

RE: Business Opportunity Rule, R511993

- **Confidentiality:** As stated above, all comments are public record. Comments containing confidential material must be filed in paper form, be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c)./1/
  - The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

### **Comment Guidelines:**

Thank you for agreeing to write a letter to the Federal Trade Commission (FTC) expressing your concerns about the proposed Business Opportunity Rule. Your letter, written in your own words, is an essential part of our strategy to protect the direct sales industry in general, and your/our business specifically.

We cannot overstate the importance of your taking the time to write a thoughtful and considerate letter. The FTC not only wants to hear public comments, but will in part gauge the impact of this rule by the level of response during the comment period.

Keep in mind that the FTC has good intentions behind this rule. Its purpose is not aimed at hurting legitimate businesses as much as its intent is to protect all citizens (including you) from falling victim to hurtful and fraudulent schemes. However, if adopted, this rule would indeed have a devastating impact on the direct sales industry, and require significant changes to our business model and sales methods. It is for this reason that we must take a united stand and let the FTC know that by casting such a wide net, they will also wipe out a legitimate industry that has provided over 13.6 million individuals the opportunity to start their own business.

Letters are much more effective when drafted in your own words. Please observe the following guidelines as you compose your letter:

- Be specific. Avoid using broad or general statements such as “this rule would have a negative impact on my business,” or “this will put me out of business.”
- Identify a specific provision of the rule and then address the impact to you and your business with specific examples and facts.
- You can address as many or as few of the provisions as you would like in your letter.
- Go for quality not quantity. Try to keep your letter to one or two pages.
- Keep the tone of your letter positive and avoid inflammatory language. Do not use all capital letters as this conveys “shouting.” Be respectful, courteous, and professional.
- The FTC is looking for detailed and persuasive explanations as to why and how this rule would be detrimental to you and your business. Use clear and concise language and be unambiguous.
- Make your letter personal, but keep in mind that it will be public record.

Areas you may wish to highlight in your letter:

- Your personal story:
  - Number of years in business
  - How you got into the direct sales business
  - How direct selling contributes to your family finances
  - How direct selling has contributed to your personal development (confidence, public speaking/presentation skills, etc.)
  - Other positive information about how this business model has helped you
- Appreciate FTC's Mission:
  - Express appreciation for FTC's consumer protection priorities, but also your concern for its impact on legitimate direct selling companies
  - Understand that there are fraudulent groups out there, but this particular rule unfairly targets legitimate direct selling businesses
- Seven-day waiting period:
  - Casts the direct selling plan in a negative light
  - Record keeping and administrative problems
  - Unnecessary delays
  - Impractical
- Elimination of the \$500 business threshold:
  - Forces the majority of direct selling companies to comply with other provisions of the proposed rule that are more appropriate for businesses requiring a greater investment than a direct selling sales kit
- Litigation Reporting:
  - Unfair in that it does not distinguish between winning and losing lawsuits
  - Irrelevance of the reporting of almost all litigation regardless of the outcome
- Earnings Claims:
  - Difficult to collect required data
  - Targeted "bad actors" will not provide accurate data, while legitimate companies will
- References:
  - Impracticality of finding the "10 nearest existing sales people"
  - Privacy and safety issues
  - Possible corporate liability for ID theft